

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG**

JEANETTE M. DEGARMO,

**Plaintiff,
v.
CIVIL ACTION NO. 3:05CV88
(Judge Broadwater)**

**JO ANNE B. BARNHART,
Commissioner of Social Security,**

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day the above styled matter came before the Court for consideration of Magistrate Judge John S. Kaull's Report and Recommendation, entered on March 13, 2006. In the interests of justice and in accordance with 28 U.S.C. § 636(b)(1), the Court has conducted a *de novo* review.

Pending before the Court are the Plaintiff's Motion to Remand (Document No. 17) and Defendant's Response thereto, which is taken as a Motion for Summary Judgment (Document No. 18). The Court, after reviewing the above, is of the opinion that the Magistrate Judge's Report and Recommendation (Document No. 20) should be and is hereby **ORDERED ADOPTED**.

In her Motion for Remand the Plaintiff argues that the administrative record reviewed by the Social Security Appeals Council was incomplete, meriting remand prior to a substantive review of the Administrative Law Judge's (ALJ) decision. The Magistrate Judge's Report and Recommendation concluded that the administrative record, even if incomplete, was sufficient to reach a merit-based review of the ALJ's decision. Accordingly, the Motion to Remand was not in order. Neither party filed

objections to this portion of the Magistrate Judge's Report and Recommendation.

Therefore, the Plaintiff's Motion to Remand (Document No. 17) is **DENIED**

WITHOUT PREJUDICE.

The Defendant argues that the Plaintiff waived any substantive issues not raised within thirty days of the Defendant's Answer and filing of the complete administrative record. The issue of the adequacy and completeness of the administrative record was raised in a timely manner as an issue in controversy before the Court. The Court has not undertaken a substantive evaluation of the ALJ's underlying decision. Therefore, for the reasons stated in the Magistrate Judge's Report and Recommendation, the Defendant's Motion for Summary Judgment (Document No. 18) is **DENIED WITHOUT PREJUDICE.**

The Plaintiff shall have thirty (30) days from the entry of this Order in which to submit her Motion for Summary Judgment, if any, and the Defendant shall have thirty (30) days from the date of filing of Plaintiff's Motion to file a Responsive Motion. Any further action on this matter shall be referred to Magistrate Judge Kaull for initial review.

It is so **ORDERED**.

The Clerk is directed to transmit true copies of this Order to all counsel of record herein.

DATED this 29th day of September 2006.



W. CRAIG BROADWATER
UNITED STATES DISTRICT JUDGE

